IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1012 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PAPPUJI MANGHUJI GOSAI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR CHIRAG M PAWAR for Appellant(s) : 1,
Ms. HANSABEN PUNANI Ld. APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 06/07/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE H.B.ANTANI)

1. The present appeal under sec. 374 of CrPC is

preferred against the judgment and order rendered by the learned Addl. Sessions Judge, 2nd Fast Track Court, Kheda at Nadiad in Sessions Case No. 174/2000, by which, the learned Judge convicted the appellant (accused) for the offences punishable under sec. 363 for a period of 4 years R/I and fine of Rs. 1000/- in default, further S/I of 4 months, under sec. 366 of IPC for a period of 5 years R/I and fine of Rs. 1500/-, in default, further S/I of 6 months and under sec. 376(2)(f) of IPC for a period of 10 years R/I and fine of Rs. 4000/-, in default, further S/I for one year. It is also observed by the learned Judge that the fine imposed on the accused be paid to the victim as compensation under sec. 357 of CrPC.

2. The short facts giving rise to the present appeal are as under:

3. It is the case of the prosecution that complainant Dharubhai Hajraji Mochi was residing in Purshottamnagar Society, House No. 103, Bakrol with his family on the date of the incident. The elder daughter of the complainant was aged about 5 years when the incident in question took place. The

accused was in contact with the complainant since last six months prior to the date of the incident i.e. 29.4.2000 and, therefore, he had good relations with the complainant. On 29.4.2000 the appellant came to the house of the complainant and induced his elder daughter and took her from the lawful guardianship of her parents and thereby committed the offence under sec. 363 and 366 of IPC. After abducting minor from the lawful guardianship of her parents, the appellant committed rape on her and, thus, he has also committed the offence punishable under sec. 376 of IPC. The complaint was given by the complainant on 29.4.2000 before the PSI Vidyanagar Police Station and the offence was registered against the appellant. The officer who was entrusted with the investigation, recorded the statements of the victim as well as her parents and various persons from the neighbourhood. The place where the incident took place was visited and the panchnama in respect of the same was prepared. The clothes put on by the appellant as well as victim were recovered and the panchnama in that regard was prepared. After recovering the clothes, the same were sent to FSL for the purpose of

obtaining analysis. The accused as well as victim were sent to hospital for the purpose of examination and the blood samples as well as sample of semen of the appellant were sent to the FSL for the purpose of analysis. On the receipt of the report from the FSL, the accused was charge-sheeted for the offences punishable under sec. 363, 366 and 376 of IPC and subsequently arrested. The appellant was produced before the court of Judicial Magistrate First Class, Anand on 5.7.2000 and the learned Magistrate made over the case to the Sessions Court as the case was exclusively triable by the Sessions Court. The charge against the appellant was framed vide ex. 5 for the offences punishable under sec. 363, 366 and 376 of IPC and as the appellant pleaded not guilt to the charge levelled against him, the matter was set down for full-fledged trial before the learned Addl. Sessions Judge, 2nd Fast Track Court, Kheda at Nadiad.

4. The prosecution has placed reliance on the following deposition in order to prove the involvement of the appellants in the commission of the offence. They are as under:

1. PW-1 Dharubhai Hajariji Complainant Ex. 7.
2. PW-2 Riyazbhai Niyazmohmad Shaikh Ex. 10
3. PW-3 Usmanbhai Abdulbhai Vora Ex. 11
4. PW-4 Laxmanbhai Janakbhai Dhobi Ex. 12
5. PW-5Nazimuddin Rahimuddin Kazi Ex. 13
6. PW-6 Dr. Ritesh Kishorkumar Shah Ex. 15
7. PW-7 Santoshben Dharubhai Hajariji Ex. 18
8. PW-8 Bharatiben Dharubhai Mochi Ex. 19
9. PW-9 Parulben Manilal Pateliya Ex. 20
10. PW-10 Bharatbhai Dinkarbhai Patel Ex. 21
11. PW-11 ASI Raijibhai Poonambhai, PSO Ex. 22
12. PW-12 PSI Natvarsinh Gambhirsinh Ex. 23
13. PW-13 Dr. Sabihabanu Sabhyasachi Ex. 34

5. The prosecution also produced following documentary evidence in order to bring on the guilt against the appellant. They are as under:

1) The complaint given by Dhirubhai Haraji at Ex. 8
2) The certificate of birthdate of victim at Ex. 9
3) The panchnama of the body of the person of the accused at Ex. 14.
4) The certificate issued by Shri Krishna Hospital to the appellant at Ex. 17.
5) The panchnama of the clothes put on by victim at Ex. 24.

6) The Note sent to FSL at Ex. 26.

7) The serological report at Ex. 30 etc.

6. On the conclusion of the trial, further statement of the appellant was recorded under sec. 313 of CrPC and he also submitted his written reply explaining the circumstances.

7. After going through the entire gamut of oral deposition and the documentary evidence, the learned Addl. Sessions Judge, 2nd Fast Track Court, Kheda at Nadiad held that the prosecution has established that the appellant kidnapped minor daughter of the complainant from his lawful guardianship. The appellant committed the said act after giving inducement and allurement to the minor daughter of the complainant with a view to seduce her to have inter-course and, therefore, the prosecution has established the case against the appellant for the offences punishable under sec. 363 and 366 of IPC. The learned Judge further held that after giving inducement to the minor girl, the appellant committed heinous crime of rape on a minor girl of about 5 years of age and, thereby he has committed the

offence punishable under sec. 376 of IPC. The learned Judge on the basis of the evidence on record of the case, convicted the appellant for the offences punishable under sec. 363, 366 and 376(2)(f) of IPC and imposed the sentence, as elaborately narrated in the judgment.

8. Learned advocate Mr. Chirag M. Pawar for the appellant submitted that the prosecution has examined 13 witnesses and produced documentary evidence in order to prove the involvement of the appellant in the commission of the offence, but on the perusal of oral deposition adduced by the prosecution there are many contradictions in the deposition and, therefore, the benefit of doubt be given to the appellant. The learned advocate submitted that the victim who has been examined in the present case vide ex. 19 has clearly stated in the cross – examination that she was told to narrate the story of rape by her parents in the court room and, therefore, the victim was tutored to give a particular deposition. Thus, the learned advocate submitted that the deposition adduced by the prosecutrix cannot be said to be voluntarily and, therefore, the appellant is required

to exonerated in the case. The learned advocate further submitted that even the basic ingredients of sec. 363, 366 and 376 are not proved by the prosecution and the benefit of the same is required to be given to the appellant.

9. The learned APP Ms. Hansaben Punani representing the State vehementally submitted that prosecution has examined 13 witnesses. The deposition adduced by the victim PW-8 Ex. 19, makes it abundantly clear that the minor girl was given inducement by the appellant. After giving inducement and allurement she was kidnapped from the lawful guardianship of her parents. The appellant subsequently committed heinous crime of rape on minor girl of 5 years age and there is no reason to disbelieve or discard the version given by the victim who had also identified the accused during the course of the deposition. Although, there is no need for corroboration of the version given by the prosecutrix, there is ample corroboration in the case. The deposition adduced by the father of the victim PW-1 Ex. 7 supported by his own complaint at Ex. 8 as well as deposition given by the mother of the victim Santoshben PW-7 Ex. 18 makes

it abundantly clear that victim was approximately of 5 years of age when the rape was committed by the appellant. On perusal of the document at ex. 9 which is the certificate of date of birth produced in the case further makes it clear that the victim was about 5 years of age on the date of the incident. The other deposition given by Doctor as well as the certificate issued by the hospital authority and FSL report corroborates the say of the victim that the appellant had committed rape on her against her will and desire and she was given allurement or inducement before committing heinous crime of rape. Thus, the learned APP submitted that taking into consideration the overwhelming evidence adduced by the prosecution the appellant has not made out a case for acquittal and since the prosecution has established the involvement of the appellant in the commission of the offence beyond all reasonable doubt, the appeal preferred by the appellant deserves to be dismissed.

10. Heard the learned advocate Mr. Chirag M. Pawar for the appellant and Ms. Hansaben Punani learned APP for the respondent-State and perused the oral as well as documentary evidence produced in the case.

11. The prosecutrix who has been examined in the present case vide ex. 19 has deposed in her testimony that she was induced by the appellant and after giving inducement, she was taken away from the lawful custody of her parents. The appellant after kidnapping her committed rape on her. Nothing turns out from the cross-examination of the victim. The deposition adduced by the victim gets further corroboration from the complaint given by the father of the victim at Ex. 8 and his own deposition at ex. 7 to the present case and the story which was told to her mother Santoshben has been reiterated by her in her deposition vide ex. 18. The girl on the date of the incident was admittedly minor and aged about 5 years. That fact is reflected in the certificate issued by the Municipal Authority and produced at Ex. 9. Dr. Ritesh Kishorkumar Shah PW-6 Ex. 15 has deposed in his testimony that the appellant was brought to the hospital for the purpose of examination. After examining the appellant, necessary certificate was given by the Doctor. Even the certificate issued by Shri Krishna & Pramukh Swami Hospital, Karamsad ex. 36 supports the version given

by the victim. The FSL report further corroborates the say of the victim. Thus, taking into account the entire gamut of oral as well as documentary evidence, the prosecution has established the involvement of the appellant in the commission of the offence.

12. In view of the foregoing discussion, we are of the considered view that the appellant has miserably failed to point out any lecuna or loopholes in the judgment rendered by the learned Addl. Sessions Judge & 2nd Fast Track Court, Kheda at Nadiad, and therefore, we uphold the imposition of sentence inflicted by the learned Addl. Sessions Judge & 2nd Fast Track Court, Kheda at Nadiad for the offences punishable under sec. 363 for a period of 4 years R/I and fine of Rs. 1000/- in default, further S/I of 4 months, under sec. 366 of IPC for a period of 5 years R/I and fine of Rs. 1500/-, in default, further S/I of 6 months and under sec. 376(2)(f) of IPC for a period of 10 years R/I and fine of Rs. 4000/-, in default, further S/I for one year.

13. In the result, this appeal is dismissed. The Judgment and order passed by the ld. Addl. Sessions

Judge & 2nd Fast Track Court, Kheda at Nadiad in Sessions Case No. 174/2000 is hereby upheld. Mudammal be disposed of in terms of the order passed by the learned Judge after the appeal period is over.

(A.R. DAVE, J.)

(H.B. ANTANI, J.)

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